

## PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



March 8, 2005

Agenda ID #4383

TO: PARTIES OF RECORD IN INVESTIGATION 04-08-022

This is the draft decision of Administrative Law Judge (ALJ) Bushey. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN

Angela K. Minkin, Chief  
Administrative Law Judge

ANG:tcg

Attachment

Decision **DRAFT DECISION OF ALJ BUSHEY** (Mailed 3/8/2005)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the matter of the Order Instituting Investigation and Order to Show Cause on the Commission's own motion into the operations and practices of All State Moving and Storage, Inc., a California corporation doing business as (dba) California Transportation Systems, dba Prime Movers, dba All State Moving & Storage, dba City Transportation System, and its President, Jacob (aka Yacov) Sudai, and Secretary, Israel Lerner; Washington Mini-Storage, Inc., a Maryland corporation dba Prime Movers, dba Washington Moving and Storage, and its President, Yacov Sudai; and VIP Relocation, Inc., a California corporation and its President, Israel Lerner, and Vice President, Kfir Cohen,

Applicants/Respondents.

Investigation 04-08-022  
(Filed August 19, 2004)

**OPINION IMPOSING FINE AND  
ORDERING PAYMENT OF DAMAGE CLAIMS****Summary**

This decision finds that the Commission's Consumer Protection and Safety Division (CPSD) has presented substantial evidence that respondents have

violated numerous provisions of the Household Goods Carriers Act<sup>1</sup> and the Commission's regulations. This evidence has not been disputed. We, therefore, grant CPSD's request and impose a fine and order payment of damage claims.

### **Background**

The Commission initiated this proceeding in response to numerous consumer complaints as well as Commission staff's allegations of unlawful operations and advertising for moving services by respondents.

On October 5, 2004, the Assigned Commissioner and Administrative Law Judge (ALJ) convened a prehearing conference. Respondent Lerner, representing himself personally and VIP Relocation, appeared, but no other respondent filed an appearance or participated in any way.

At the prehearing conference, Lerner stated that he had terminated all affiliations with All State or Washington Mini-Storage, and that he understood and was willing to comply with the Commission's licensing requirements. Lerner also stated that he was willing to pay fines associated with his and VIP Relocation's past violations. Lerner also noted that VIP Relocation's application for a household goods carrier permit was pending before the Commission and he hoped that CPSD could support granting the application.

At the conclusion of the prehearing conference, CPSD and Lerner agreed to meet and confer regarding a possible settlement agreement resolving Lerner's and VIP Relocation's participation in this proceeding.

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<sup>1</sup> Public Utilities Code Sections 5101 to 5320. All citations are to the Public Utilities Code unless otherwise indicated.

On December 2, 2004, CPSD, Lerner, and VIP Relocation submitted a joint motion seeking Commission approval of a settlement agreement resolving Lerner's and VIP Relocation's participation in this proceeding. On January 27, 2005, the Commission approved the settlement agreement with Lerner and VIP Relocation. The settlement agreement had no effect on respondents other than Lerner and VIP Relocation.

This decision applies to all respondents, other than Lerner and VIP Relocation. As used in this decision, "respondents" refers to all respondents other than Lerner and VIP Relocation.

On January 14, 2005, CPSD submitted its brief requesting fines and other penalties against respondents. CPSD provided evidence that respondents have committed a total of 523 violations of the Household Goods Carrier Act and the Commission's Max 4<sup>2</sup> regulation. CPSD presented staff declarations and other documentary evidence showing that respondents have not been authorized by this Commission to provide Household Goods Carrier services in California, and, notwithstanding this absence of authorization, have advertised and provided such moving services. Moreover, in providing the services, respondents failed to abide by various consumer protection rules, including requirements for insurance and timely response to and payment of damage claims. Specifically, CPSD's evidence detailed the following violations:

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<sup>2</sup> Pursuant to § 5139, the Commission may adopt maximum rates and other rules for the transport of used household goods in California by Household Goods Carriers. This rule, which is in its fourth version, is commonly referred to as the "MAX 4 Tariff."

### Summary of CPSD's Evidence of Respondents' Violations

<b>Violation</b>	<b>Number of Violations</b>	<b>Statutory Fine</b>	<b>Potential Fine</b>
Operating without a permit (§ 5133(a)(1))	23	\$5,000	\$115,000
Advertising without a permit (§ 5314.5)	396	\$5,000	\$1,980,000
Operating without workers' compensation insurance (§ 5162)	11	\$500	\$5,500
Operating without liability insurance (§ 5161)	9	\$500	\$4,500
Operating without cargo insurance (§ 5161)	12	\$500	\$6,000
Max 4 – Item 88, furnish customer copy of information booklet	9	\$500	\$4,500
Max 4 – Item 92, timely respond to customer loss and damage claims	7	\$500	\$3,500
Max 4 – Item 108, give estimates only after visual inspection of goods	17	\$500	\$7,000
Max 4 – Item 128, provide written moving agreement	16	\$500	\$6,500
Max 4 – Item 132, provide a “not to exceed” price	23	\$500	\$11,500
<b>TOTAL</b>	<b>523</b>		<b>\$2,147,000</b>

In its brief, CPSD analyzed this evidence of violations in light of Commission precedent and recommended a fine of \$40,000. In addition, CPSD requested that the Commission order respondents to pay all loss and damage claims filed with the Commission. CPSD also requested that the Commission make a finding, pursuant to § 5135, that respondents are unfit to operate as household goods carriers.

### Discussion

Pursuant to § 5313.5, the Commission may impose of fine of not more than \$5,000 for each time a person or corporation operates as a household goods

carrier without a permit, or holds itself out by advertisement as such a carrier. CPSD has presented substantial evidence in the record, which is uncontested, of 419 such violations by respondents.

Pursuant to § 5313, the Commission may impose a fine of not more than \$500 for other violations of the Household Goods Carrier Act. CPSD has presented substantial and uncontested evidence that respondents have committed 104 such violations.

The Commission has established a set of guidelines for assessing fines, see Decision 98-12-075, 84 CPUC 2d 155, 187-90. CPSD presented a thorough analysis of the factors set out in these guidelines, including recent Commission precedent, and recommended a fine of \$40,000. This recommendation is also uncontested.

CPSD sought a finding that respondents are unfit, as set forth in § 5135, to operate as household goods carriers. CPSD also requested the respondents be ordered to pay all loss and damage claims filed with the Commission.

CPSD has presented substantial evidence in the record supporting each of its requested penalties. Respondents have not contested any factual allegations or legal conclusions. We will, therefore, grant in full each and every CPSD request.

### **No Hearing is Necessary**

Respondents have not appeared to contest CPSD's allegations, consequently there are no disputed issues of material fact requiring a hearing. CPSD has supplied substantial evidence in the record to support the requested relief. We conclude that no hearing is necessary.

**Comments on Draft Decision**

The draft decision of the ALJ was mailed to the parties in accordance with Public Utilities Code Section 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. Comments were filed on \_\_\_\_\_, and reply comments were filed on \_\_\_\_\_.

**Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Maribeth A. Bushey is the assigned ALJ in this proceeding.

**Findings of Fact**

1. The Commission initiated this proceeding in response to consumer complaints and CPSD's investigation.
2. Other than Lerner and VIP Relocation, no respondents appeared at the prehearing conference.
3. Lerner and VIP Relocation entered into a settlement agreement with CPSD, which resolved these respondents' participation in this proceeding, and was approved by the Commission in D.05-01-052.
4. CPSD presented evidence of 523 violations of the Household Goods Carriers Act and Commission regulations by respondents as set forth above, and recommended a fine of \$40,000, a finding of unfitness, and an order to pay loss and damage claims.
5. Respondents have not contested CPSD's allegations, evidence, or recommended penalties.
6. No hearing is necessary.

**Conclusions of Law**

1. The record contains substantial and uncontested evidence of 523 violations of the Household Goods Carrier Act and Commission regulations.

2. The record supports CPSD's penalty recommendations, which should be adopted.
3. This decision should be effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. No later than 45 days after the effective date of this order, All State Moving and Storage, Inc., a California corporation doing business as (dba) California Transportation Systems, dba Prime Movers, dba All State Moving & Storage, dba City Transportation System, and its President, Jacob (aka Yacov) Sudai; Washington Mini-Storage, Inc., a Maryland corporation dba Prime Movers, dba Washington Moving and Storage, and its President, Yacov Sudai; and Vice President, Kfir, jointly and severally, shall pay the sum of \$40,000 to the California Public Utilities Commission for deposit to the General Fund, and remitted to the Commission's Fiscal Office at 505 Van Ness Avenue, Room 3000, San Francisco, CA 94102. The number of this decision shall be included on the face of the check.
2. All respondents listed in Ordering Paragraph 1 are not fit to operate as household goods carriers in California.



3. No later than 45 days after the effective date of this order, all entities listed in Ordering Paragraph 1 shall pay all claims against them for loss or damage filed with the Commission.

4. This proceeding is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.